

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF OREGON

3 PORTLAND DIVISION

4 MILAUDI KARBOAU,)

5 Plaintiff,)

No. 03:14-cv-00297-HU

6 vs.)

7 CITY OF PORTLAND; PORTLAND POLICE)
BUREAU (PPB); JIM LAWRENCE; DAVID)
8 ANDERSON; VIRGINIA ANNE ANDERSON;)
CARL ANN WILLIAMS; TOM BADRICK;)
9 KGW NEWS CHANNEL 8 TV; RICK JACOBS;)
THE MID-COUNTY MEMO NEWSPAPER AND)
10 PUBLISHING, INC.; SEAN P. NELSON;)
and DARLENE VINSON;)

ORDER ON APPLICATION
TO PROCEED *IN FORMA*
PAUPERIS, AND MOTION
FOR APPOINTMENT OF
COUNSEL; AND FINDINGS
AND RECOMMENDATION ON
INITIAL REVIEW

11 Defendants.)
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14 Milaudi Karboau
15 7585 S.W. Hunzker Street
Apt. 50
16 Tigard, OR 97223

17 Appearing *pro se*

18 HUBEL, M.J.:

19 On February 14, 2014, the plaintiff filed an application to
20 proceed *in forma pauperis*, Dkt. #1; a proposed Complaint, Dkt.
21 #2; and a motion for appointment of *pro bono* counsel, Dkt. #3.
22 The court finds the plaintiff's application to proceed *in forma*
23 *pauperis* meets the requirements set forth in 28 U.S.C.
24 § 1915(a)(1), showing that the plaintiff is unable to pay the
25 filing fee. Accordingly, the plaintiff's application to proceed
26 *in forma pauperis* is **granted**. However, because the court
27 further finds, as discussed below, that the plaintiff's
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1 Complaint should be dismissed, his motion for appointment of
2 counsel is **denied**.

3 The court now turns to initial review of the Complaint
4 pursuant to 28 U.S.C. § 1915(e)(2)(B). The undersigned submits
5 the following findings, and recommendation for disposition of
6 the case, pursuant to 28 U.S.C. § 636(b)(1)(B).

7 The plaintiff Milaudi Karboau is a frequent litigant in this
8 court, having filed seventeen previous actions between 2002 and
9 2013 (five in 2002; two in 2003; one each in 2004, 2006, and
10 2008; three in 2011; and four in 2013). In many of these
11 lawsuits, Karboau has advanced several different legal theories
12 in an attempt to impose liability on his former neighbors,
13 Portland police officers, and others, for their actions in
14 connection with Karboau's arrest and conviction, in 2002, for
15 receiving stolen property, and related charges.

16 In the present case, Karboau takes a new tack, alleging the
17 defendants slandered and defamed him, in 2002, by knowingly pub-
18 lishing false statements about the basis for his arrest. He
19 attempts to overcome any statute of limitations argument by
20 claiming he only discovered these allegedly false statements
21 after his release from prison in early February 2013.

22 Karboau's Complaint suffers from several fatal defects.
23 Firstly, his "Preliminary Statement" was cut-and-pasted from
24 another of his pending cases, *Karbaou v. City of Portland*, Case
25 No. 03:13-cv-00609-PK, in which he seeks damages pursuant to 42
26 U.S.C. § 1983 (mis-cited as 28 U.S.C. § 1983) for the return of
27 seized property. See Dkt. #2 in the 2013 case. The "Preliminary
28 Statement" bears no relationship to the present action.

2 - FINDINGS AND RECOMMENDATION

1 Secondly, and more importantly for purposes of the current
2 review, Karbaou also has cut-and-pasted his jurisdictional
3 allegations from the 2013 case into his Complaint in the present
4 case. He alleges federal question jurisdiction under section
5 1983, and supplemental jurisdiction over his "states law tort
6 claims." However, in his "Plaintiff's Statement of Claim" he
7 alleges facts and asserts claims **solely** for defamation and
8 slander. In other words, Karbaou's claims in the present case
9 arise solely under state law. Further, it is clear from
10 Karbaou's identification of the parties that there is no
11 diversity of citizenship to support diversity jurisdiction.

12 In short, the court finds there is no basis for this court's
13 jurisdiction. A claim over which the court lacks jurisdiction
14 is *per se* frivolous for purposes of 28 U.S.C.
15 § 1915(e)(2)(B)(i). See *Castillo v. Marshall*, 107 F.3d 15
16 (Table), 1997 WL 55311, at *1 (9th Cir. Feb. 7, 1997) (finding
17 a claim is frivolous under section 1915(d), now section 1915(e),
18 where the court lacks subject matter jurisdiction). The
19 dismissal should be with prejudice, as the jurisdictional defect
20 could not be remedied by amendment.

21 22 **SCHEDULING ORDER**

23 These Findings and Recommendation will be referred to a
24 district judge. Objections, if any, are due by **March 31, 2014**.
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1 By the earlier of the date any objections are filed or March 31,
2 2014, these Findings and Recommendations will go under
3 advisement.

4 IT IS SO ORDERED.

5 Dated this 12th day of March, 2014.

6 /s/ Dennis J. Hubel
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8 Dennis James Hubel
9 Unites States Magistrate Judge
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